IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 576 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SHAMBHUSING MAGANSINH THAKORE

Appearance:

1. Special Civil Application No. 576 of 1994
MR YOGESH S LAKHANI for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/03/2002

ORAL JUDGEMENT

Heard learned advocate Ms. Krina Thakkar for Mr. Y.S. Lakhani for the petitioner corporation. By way of this petition, the petitioner has challenged the award made by the labour court concerned in reference no. 288

of 1992 dated 21st July, 1993 wherein the labour court has granted reinstatement in service without back wages for the intervening period. This petition was admitted by this court by issuing rule thereon on 25th January, 1994 and while issuing rule, ad.interim relief in terms of para 8(C) has been granted by this court.

During the course of hearing, learned advocate Ms. Thakkar for the petitioner has submitted that pursuant to the award made by the labour court, the respondent was reinstated in service and thereafter, he has again been dismissed from service in view of the misconduct committed by the workman subsequent to his reinstatement pursuant to the award in question. Said action of dismissal has been challenged by the workman before the labour court after raising an industrial dispute to that effect and the said dispute is pending before the labour court. She has further submitted that the labour court has committed gross error in reinstating the respondent who was working as a badli workman in exercise of the powers under section 11A of the Industrial Disputes Act. according to her submission, such exercise of the powers under sec. 11-A in case of the respondent herein was unwarranted as it was a case of misappropriation of the revenue of the corporation.

I have perused the award in question made by the labour court. Before the labour court, the legality, validity and propriety of the departmental inquiry was not challenged by the respondent by filing purshis Exh. 10 and then, the respondent filed another purshis at Exh. 11 wherein he has declared that he is not praying for any back wages for the intervening period. The labour court, in exercise of the powers under section 11A of the Industrial Disputes Act, 1947, found that looking to the misconduct and gravity thereof, punishment imposed by the corporation is little but harsh and unjustified and, therefore, unwarranted and hence the labour court directed reinstatement without back wages for the intervening period. Therefore, the labour court, in exercise of such powers, granted reinstatement without back wages after considering entire evidence on record and considering the fact that the respondent was working as a badli workman. Therefore, considering the papers on record, according to my opinion, the labour court has not committed any error in making the award in question which would require interference of this court in exercise of the powers under Article 226/227 of the Constitution of India. It is also pertinent to note that though there was interim relief granted by this court, the petitioner has subsequently reinstated the workman in service and

the respondent remained in service for a period upto 2001 and has then been dismissed in view of the misconduct subsequently committed by him. Therefore, though there was stay operating against the award in question, the corporation has implemented the same by reinstating the workman. On this ground also, this petition is required to be rejected. Considering these aspects of the matter, according to my opinion, there is no substance in this petition and the same is, therefore, dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated with no order as to costs.

20.2.2002. (H.K. Rathod,J.)

Vyas